

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1091/86 to 1103/86

with

FIRST APPEAL No 115/87 to 126/87

with

FIRST APPEAL NO. 1603 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SHANTRAM KARSANBHAI

Appearance:

First Appeal Nos. 1091/86 to 1097/86 & FA NO.1603/86

MR. S.J. Dave, APP for Appellants

First Appeal Nos. 1098/86 to 1103/86

MS HARSHA DEVANI, APP for Appellants

MR PV HATHI for Respondent No.1 IN ALL FIRST APPEALS

First Appeal No 115/87 TO 126/87

MR PK JANI for Appellants

MR PG DESAI, GOVT. PLEADER for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 20/03/98

This group of appeals arise under Sec.54 of the Land Acq. Act read with Sec.96 of the C.P.Code, wherein each of the appellants challenged the legality and validity of the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

2. The first sub-group of appeals herein have been filed by the State for the purpose of reducing amount of compensation on the ground that the Reference Court has awarded compensation in excess of what it could and should have done on the evidence on record. As against this, the second sub group of the appeals herein have been filed by the original claimants-land owners for the purpose of enhancement of compensation awarded by the Reference Court.

3. Since both the sub-groups arise from the common judgment and awards passed by the Reference Court, it would be convenient to deal with both the sub- groups by a common judgment. We propose to do so accordingly.

4. The lands under acquisition were acquired for the purpose of Demi-II Irrigation Scheme and all lands under acquisition were located in the same village namely Rajavad, Ta:: Morbi, Dist.: Rajkot.

4.1 The Reference Court after referring to and relying upon the oral and documentary evidence, determined the market value of the lands under acquisition at the rate of Rs. 110/ per Are for Jirayat land (non-irrigated land) and at the rate of Rs. 140/ per Are for Bagayat land (irrigated land).

4.2 It may also be noted that lands were acquired under a notification issued under Sec.4 of the said Act published on 1.1.1980.

5. At this juncture, we make note and observe that we have decided a group of first appeals namely First Appeal Nos. 467/86 to 511/86 by our decision dated 18/19.3.1998 (hereinafter referred to as the said decision). There is no controversy amongst the ld. counsel that by and large, and so far as determination of the market value of the lands under acquisition is concerned, the same would be governed by the market value determined by us in the said decision.

5.1 This is so because in the said decision, lands

were acquired for the very same purpose, and were located in the very same village, as in the instant group of appeals. The only difference between the two groups of appeals is that Sec.4 notification considered in our said decision was dated 10.5.1979 whereas the corresponding notification in the present group of appeals is 1.1.1980. Thus, the only difference is that the notification in the instant group of appeals is later in point of time by about 6 1/2 months.

5.2 At this stage, learned counsel for the claimants -land owners sought to contend that since the notification under Sec.4 in the instant group is later by about six and half months in relation to the corresponding notification considered in the said decision, some increment in the market value is justifiable.

5.3 We, however, find that as there is absolutely no evidence even of an indirect nature of any price rise at all or even an indication of a rising trend in prices. We are not willing to act on a general presumption that even a small interval of six and a half months is bound to result in a rise in prices.

5.4 Even otherwise, under Sec.24 of the said Act, no allowance can be made for consequences which flow from the acquisition itself.

5.5 Even otherwise, the lands in the instant case are in the same village as the lands acquired under the prior notification and considered in the said decision. Thus, the public at large being aware of the prior acquisition would be conscious of the possibility that even these lands would be acquired. Thus, even if we assume that there was some demand for land in the first place, this aspect would create a drop in demand which would be reflected in a drop in the market value rather than a rise.

5.6 It is also the fact that the market value of lands, other factors being equal, depends upon the demand for land. On the facts and in the circumstances of the case, there is no controversy that there was no demand at all. This is obvious from the fact that apart from the transaction discussed by us in the said judgment, there are no other sale instances at all, or at least none which would be of any significant utility to the land holders- claimants. As discussed in detail in our said decision, the transaction pertaining to the three documents in question is a tainted transaction on which

no reliance can be placed for the purpose of determining the market value. If this tainted transaction requires to be ignored, as held in our said decision, there are no other transactions at all. Thus, in the absence of a demand for land, we are satisfied that a relatively small time period of six and half months would not result in any price escalation which would justify this submission. This contention is, therefore, not accepted.

6. Thus, from the specific facts of the case, we need not reiterate all the facts and circumstances and the evidence on record to confirm the market value determined in the said decision, as applicable on all fours in the present group of appeals. However, with a view to further clarify the fact situation, we may only emphasize that the said decision is based on an interpretation of three sale-deeds and the impact of the said transaction upon the process of determination of the market value of the lands under acquisition, and that those three sale-deeds constitute the only evidence in the present group of appeals as well. Thus, for all practical purposes, the evidence considered by us in the said decision is also the evidence in the present group of appeals. Thus, for the reasons stated in our aforesaid decision, we determine the market value of the acquired land for the present group of appeals at the rate of Rs.110/ per Are for Jirayat land and Rs. 140/per Are for Bagayat land (thereby confirming the awards of the Reference Court to the said extent). We shall now discuss the small but significant distinction which is sought to be drawn from our said decision, looking to the particular facts of the present group of appeals.

7. Ld. counsel for the appellant-State firstly contends that the Reference Court erred in awarding separate and independent compensation for the wells which exist on survey No. 4 & 14 corresponding to Land Ref. Case Nos. 206/82 and 213/82 respectively. This contention is based upon a decision of the Supreme Court in the case of State of Bihar v/s Ratanlal Shahu & Others, reported at (1996)10 SCC 635, following the prior decision of the Supreme Court in the case of O. Janardena Reddy & Others v/s Spl. Deputy Collector, L.A. Unit :IV, LMD, Karimnagar, A.P. reported at (1994)6 SCC 456. Reliance is placed on the principle laid down in the said two decisions on which there cannot be any controversy, to the effect that where the lands under acquisition are classified as irrigated land and such classification is on account of existence of well existing upon the acquired land, the valuation of the land is reflected in the higher value attributable to the

land categorised as irrigated land and, therefore, the well do not justify its separate and independent valuation for the purpose of awarding additional compensation therefor. Nodoubt, this is a principle of a general nature, which would normally apply where-ever lands have been treated as irrigated lands and have been classified and valued as superior to non-irrigated lands, where such a higher valuation is on account of facility of irrigation available upon the acquired land itself due to existence of the well. On the basis of this principle, ld. counsel for the appellant State contends that there is absolutely no justification in awarding additional and separate compensation for the well and that this amount should be disallowed by this Court in toto.

8. No doubt, as we have observed herein above, there cannot be any controversy to the principle as such. However, when we consider the application to the facts of the case, we find that a very curious and incongruous situation would arise, which would also result in a very serious injustice being done to the claimants land-owners.

8.1 Out of this group of cases, the question of a well upon the irrigated land, arises in only two Land Ref. Cases namely Land Ref. Case No. 206/82 upon Survey No.4 and Land Ref. Case No.213/82 upon Survey No.14.

8.2 In the first case, the Reference Court has awarded Rs. 13,587/ as the total amount of compensation on the basis of the market value + additional amount of Rs. 11,250/ for the well thereon. As against this, it is submitted by the ld. counsel for the claimants, looking to the figures of compensation so awarded, it cannot possibly be said that value of the well is reflected in the higher valuation of the market value of the land by treating it as irrigated land. As per the figures noted and stated by us in this specific instance, it would then appear that the land in question, although treated as irrigated land and, therefore, of superior quality is worth only Rs. 13,587/ out of which contribution to its superiority on account of well is itself worth Rs. 11,250/. Obviously, this is a incongruous and unrealistic situation on the particular facts of the case. It was then suggested only for the purpose of compensation, that if the lands were valued as non-irrigated land and then separate compensation for the well is awarded, the concerned claimants would then get a composite compensation of Rs. 27,720/-.

8.3 Similar figures for the second well in Land Ref. Case No. 213/82 situated upon Survey No. 14 indicate that aggregate compensation on account of market value as Bagayat land would be Rs. 16,996/, and additional amount for the well being granted by the Reference Court at Rs.9000/. As against this, if the lands were valued as non-irrigated land and independent compensation as quantified by the Court was awarded for the well, these claimants would then get an aggregate amount of Rs.22,354/.

9. Thus, on the facts and circumstances of these two cases, we find that the superior valuation of the land, and classification as irrigated land in terms of monetary value cannot really and practically be justified looking to the disproportionate value of the land in relation to the market value of the land without the well.

10. Thus, on the particular and exceptional facts and circumstances of the case, and without an intention of creating any precedent whatsoever on principle, we find that atleast some amount on account of well is justified.

10.1 Looking to the evidence on record, it is found that the Reference Court has awarded only 75% of the value of the wells as proved by the valuation report which is proved as evidence on record. However, if we are not in a position to award proved compensation on record as an independent and separate compensation for the well on account of the principle laid down by the Supreme Court, the least we can do by way of exceptional circumstances prevailing in this case, is to further reduce by 50% the amount awarded by the Reference Court on account of the well.

10.2 Thus, we hold and direct that so far as Survey No.4 in Land Ref.Case No. 206/82 is concerned, a separate compensation for the well shall stand at Rs. 6625/-, and the corresponding figure for Survey No.14 in Land Ref. Case No. 213/82 shall stand at Rs. 4500/.

11. Thus, although we are confirming the market value of the land under acquisition as determined by the Reference Court, some reduction from the compensation in respect of well has been effected by us in the appeals filed by the State of Gujarat. Thus, appeals namely First Appeal Nos. 1091/86 to 1103/86 are, therefore, partly allowed.

12. As against this, another contention raised by the

1d. counsel for the claimants -land owners is required to be considered and ultimately requires to be allowed. In this context, the 1d. counsel for the original claimants has contended that the Reference Court has perhaps through inadvertence and/or otherwise erred in law in awarding compensation at the rate of 30% only on the amount enhanced by the Reference Court in a Reference under Sec.18, and by implication, disallowed solatium on the amount awarded by the Land Acq. Officer. Obviously, this is an error which requires to be rectified. Accordingly, we hold and direct that the claimants- land owners would be entitled to solatium at the rate of 30% on the total compensation awardable on the market value of the land which would be aggregate of such compensation awarded by the Land Acq. Officer and that awarded by the Reference Court under sec.18.

13. A similar contention in respect of interest awarded is also required to be upheld. The Reference Court has awarded interest at the rate of 9% firstly only on the amount enhanced under Sec.18 and has applied this rate uniformly from the date of taking over possession by the Acquiring Body. This is also an error which requires to be rectified. Accordingly, we hold and direct that the claimants- land owners would be entitled to the interest on the aggregate amount of compensation awardable, including the compensation determined by the Land Acq. Officer, and that the interest shall be payable at the rate of 9% p.a. for the first year commencing from the date of handing over possession to the Acquiring Body and at the rate of 15% p.a. from the commencement of the 2nd year till the date of payment or deposit. Thus, the appeals filed by the claimants-original land owners namely First Appeal Nos. 115/87 to 126/87 are also partly allowed. There shall be no orders as to cost in each of the group of appeals.

14. No other points are urged.

15. Decree accordingly.

16. A copy of our said decision i.e. decision in First Appeal Nos. 467/86 to 511/86 dated 18/19.3.1998 shall be placed together with the copy of the present judgment in each of the present First Appeals.

00000

*rawal